

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
The Establishment of Policies)	
and Service Rules for the Mobile)	IB Docket No. 99-81
Satellite Service in the 2 GHz Band)	
)	
TO: The Commission)	

**JOINT REPLY COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television (“MSTV”) and the National Association of Broadcasters (“NAB”)¹ (collectively, “Joint Broadcasters”) submit these reply comments to the above-captioned *Notice of Proposed Rulemaking*. In this proceeding, we urge the Commission to maintain its commitment, repeatedly reaffirmed in the related *2 GHz Relocation* proceeding, to ensure that the allocation of 2 GHz spectrum for Mobile Satellite Service (“MSS”) does not disrupt the ongoing provision of electronic newsgathering (“ENG”) and other live video services by Broadcast Auxiliary Service (“BAS”) licensees.² The Commission has recognized the value these services provide to the public, and it has accordingly determined that the 2 GHz spectrum at issue in this proceeding should be made available for MSS only if the MSS entrants pay to relocate the incumbent BAS licensees to comparable

¹ MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks that serves and represents the American broadcast industry.

² See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, 13 FCC Rcd 23949, 23958 (1998) (“*2 GHz Relocation MO&O/Third*”).

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facilities in the narrower spectrum now allocated for BAS.³ Therefore, the Commission should reject the various proposals in this proceeding that would undermine the relocation compensation principle. It should also move quickly to resolve the outstanding BAS relocation issues before making any decisions as to how the 2 GHz spectrum should be divided among potential MSS licensees.

I. THE BAS RELOCATION ISSUES SHOULD BE DECIDED IN THE RELOCATION PROCEEDING, BASED ON THE WELL-SETTLED *EMERGING TECHNOLOGIES* PRINCIPLES.

Several MSS commenters in this proceeding argue that the Commission should expedite the licensing of MSS operators at the expense of the relocation compensation principle.⁴ The Commission should reject these untimely arguments, which seek to re-open an issue that has already been decided and reaffirmed in the related *2 GHz Relocation* proceeding. In the *2 GHz Relocation* proceeding, the Commission repeatedly (and rightly) affirmed the application of the *Emerging Technologies* compensation principle to the relocation of incumbents from the 2 GHz spectrum to be made available for MSS. In the *MO&O/Third NPRM*, the Commission stated,

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NPRM); First Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 7388, 7402, 7414 (1997) (“*2 GHz Relocation First R&O/FNPRM*”).

³ *2 GHz Relocation MO&O/Third NPRM*, 13 FCC Rcd at 23958; *2 GHz Relocation First R&O/FNPRM*, 12 FCC Rcd at 7396, 7402; Notice of Proposed Rulemaking, *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, 10 FCC Rcd 3230 (1995).

⁴ For example, ICO’s and IUSG’s comments ask the Commission to adopt the gradual relocation they proposed in the relocation proceeding as an integral part of the 2 GHz MSS licensing scheme. Comments of ICO Services Limited, at 6-8 (June 24, 1999) (“*ICO Comments*”); Comments of BT North America et al., at 13-16 (June 24, 1999) (“*IUSG Comments*”). TMI Communications similarly reiterates its opposition to the relocation compensation requirement and urges the Commission to “establish standard reimbursement amounts which are capped at a certain equitable level, in order to reduce the amount of required negotiation between the new satellite and incumbent terrestrial licensees.” Comments of TMI Communications & Co., Limited Partnership (TMI), at 5-6 (June 24, 1999) (“*TMI Comments*”); *see also* Comments of Mobile Communications Holdings, Inc. (MCH), at 23-24 (June 24, 1999) (“*MCH Comments*”) (urging the Commission not to require any MSS operator to pay relocation costs until it is ready to commence commercial operations).

We find that the goals expressed in the *Emerging Technologies* proceeding of providing for the fair and equitable sharing of 2 GHz spectrum, preventing disruption to incumbent operations and minimizing the economic impact on incumbent licensees are unchanged and apply with equal weight to the present situation facing incumbent BAS licensees. We therefore affirm the decision to apply the cost recovery policies established in the *Emerging Technologies* proceeding to BAS equipment.⁵

Nothing in this proceeding justifies undermining that decision here. Accordingly, the Commission should reject the MSS challenges to the compensation principle and should instead preserve the compensation principle in any licensing or service rules it adopts for MSS.

A. BAS Operations Should Not Be Sacrificed To Expedite Mobile Satellite Service Licensing.

In this proceeding, the Commission's primary goal is to expedite the licensing and commencement of service by the proposed 2 GHz MSS systems.⁶ That is not the goal of the relocation process. As noted above, the goal of the *Emerging Technologies* relocation principle is to make spectrum available for new services *without materially disrupting or economically burdening the incumbents already using the spectrum to provide valuable services to the public.*⁷ The Commission thought it essential, in managing the spectrum in the public interest, to ensure that both new and tried-and-true services are offered to the public. Extensive comments on how these co-equal priorities should be balanced in the 2 GHz context have been filed in the

⁵ 2 GHz Relocation MO&O/Third NPRM, 13 FCC Rcd at 23958; see also 2 GHz Relocation First R&O/FNPRM, 12 FCC Rcd at 7402, 7414.

⁶ Notice of Proposed Rulemaking, *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, ¶ 1 (released March 25, 1999) ("Notice").

⁷ See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies* ("Emerging Technologies"), ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992); Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd 7797 (1994), *aff'd*, *Association of Public Safety Communications Officials- International, Inc. v. FCC*, 7 F.3d 395 (D.C. Cir. 1996).

relocation proceeding, and that is the proper place to resolve the outstanding issues concerning how (not whether) the relocation compensation principle is implemented. In this proceeding, the Commission must not abandon the critical balance struck by the *Emerging Technologies* principle in the interest of advancing the “new entrant” side of the balance. The Commission cannot justify such a shift in priorities at all, but particularly not in this proceeding.

The Commission should ensure that the decisions it makes in this proceeding preserve (and are informed by) implementation of the *Emerging Technologies* relocation compensation principle in the *2 GHz Relocation* proceeding – implementation of which is an essential prerequisite to the availability of the 2 GHz frequencies for MSS.⁸ For example, whatever licensing scheme the Commission adopts should include a requirement that licensees must contribute to relocation compensation (or agree to contribute by a certain date) as a condition of receiving their licenses. Alternatively, the Commission could include in any “construction milestones” it adopts an early deadline by which each licensee must contribute to relocation compensation or face forfeiture of its license.

B. Broadcasters Should Not Bear The Burden Of Providing Telecommunications Services To Unserved Communities.

Some MSS commenters ask the Commission to reject the relocation compensation principle in order to promote the provision of telecommunications services to unserved areas. While opposing the imposition of any service requirements or incentives on MSS operators, these commenters argue that the Commission should minimize or eliminate the

⁸ See Comments of Iridium LLC, at 14 (June 24, 1999) (“*Iridium Comments*”) (“The band plan framework to be adopted by the Commission must . . . recognize and address the peculiar problems created by the incumbent users that occupy the different segments of the 2 GHz MSS band. The domestic incumbents in these bands have designed and built telecommunications systems that serve the public interest. While the Commission should certainly strive to make spectrum available as quickly as

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relocation compensation obligation to make it easier for MSS operators to offer affordable service in rural, unserved areas.⁹ The Commission should reject these proposals.

First, there is no indication that eliminating or reducing relocation compensation will guarantee the provision of MSS service to unserved areas. More importantly, the goal of making such services available does not justify burdening BAS licensees with the costs of relocation, contrary to the *Emerging Technologies* precedent and Commission policy. Broadcasters use the BAS spectrum to provide valuable ENG services, including live news and weather reports, that are universally available to the public at no charge. Those essential services should not be threatened in the pursuit of a hypothetical expectation that at some point in the future MSS operators will be in a position, voluntarily or otherwise, to provide affordable service to rural communities. The *Emerging Technologies* principle is designed to make spectrum available for new services, but only insofar as the entry of those services does not disrupt valuable existing services that already make good use of the spectrum. Eliminating or reducing the compensation component of the relocation would fundamentally – and unfairly – upset that balance and could have the effect of depriving the public of existing services.

II. THE COMMISSION MUST COMPLETE THE RELOCATION OF INCUMBENT LICENSEES BEFORE DECIDING HOW TO DIVIDE REALLOCATED SPECTRUM AMONG POTENTIAL NEW ENTRANTS.

The Commission seeks comment in this proceeding on how it should go about licensing spectrum among the potential MSS licensees that have expressed an interest in providing MSS service in the 2 GHz band.¹⁰ Toward that end, the Commission proposes a

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practicable to support new and innovative technologically advanced MSS systems, it must also ensure that the services now being provided by the incumbents are not jeopardized.”).

⁹ *ICO Comments*, at 20; *MCH Comments*, at 26.

¹⁰ *Notice*, ¶ 26.

number of alternative schemes for dividing the spectrum among the MSS applicants, including (1) a traditional spectrum assignment plan; (2) a more flexible assignment plan including dedicated “expansion bands”; (3) a “negotiated entry” plan calling for assignment through coordination among the licensees; and (4) assignment by competitive bidding.¹¹ Aside from universal opposition to the competitive bidding approach, the comments filed by the various MSS applicants reflect no consensus as to which scheme would be best.¹² One applicant proposes its own “all shared band” coordinated licensing approach.¹³

The Joint Broadcasters take no position on which of these hypothetical licensing schemes the Commission should ultimately adopt. We are, however, concerned that this debate is taking place at all at this stage in the reallocation of the 2 GHz spectrum. The assignment and licensing of the spectrum among MSS applicants is closely intertwined with, and indeed dependent upon, the relocation of incumbent licensees currently occupying the allocated spectrum. But the Commission still has not decided how to implement the relocation of incumbent BAS licensees who use the 1990-2025 MHz band to provide ENG and other services to the public.¹⁴ Numerous comments proposing a variety of approaches to the BAS relocation

¹¹ *Id.* at ¶¶ 26-48.

¹² ICO and IUSG generally support the Negotiated Entry Approach. *ICO Comments*, at 6-10; *IUSG Comments*, at 4-16. The Traditional Band Arrangement is supported by Boeing, Iridium and Constellation Communications. Comments of The Boeing Company, at 19-22 (June 24, 1999); *Iridium Comments*, at 13-29; Comments of Constellation Communications, Inc., at 19-21 (June 24, 1999) (proposing modified traditional approach under which MSS applicants with compatible systems could negotiate with each other to combine and share their assigned spectrum). Celsat, MCH, TMI and Inmarsat support the Flexible Band Arrangement. See Comments of Celsat America, Inc., at 6-20 (June 24, 1999); *MCH Comments*, at 3-9; *TMI Comments*, at 4-8; Comments of Inmarsat Ltd., at 2-10 (June 24, 1999) (supporting flexible band plan with some modifications to core band locations).

¹³ Comments of Globalstar, L.P., at 9-12 (June 24, 1999).

¹⁴ See *2 GHz Relocation MO&O/Third NPRM*, 13 FCC Rcd at 23965 (“In the *Memorandum Opinion and Order* presented above, we affirm the decision in the *First R&O/Further Notice* to apply the cost recovery policies established in our *Emerging Technologies* proceeding to the 2 GHz allocations that are the subject of this proceeding. Given the changes necessitated in the allocations in this region due to the

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were filed in the *2 GHz Relocation* proceeding, ranging from the Joint Broadcasters' proposal to relocate all BAS licensees by a date certain to a variety of MSS proposals to delay or stagger the relocation.¹⁵

The Commission must resolve the issues raised in the *2 GHz Relocation* proceeding – when and how incumbent BAS licensees will be relocated, what standards and principles will govern the relocation negotiations and who will participate, when and by whom compensation will be paid, etc. – before (or at least at the same time as) it makes a decision about how the spectrum being made available will be divided among the new entrants. Otherwise, a premature decision on 2 GHz MSS licensing could affect (and limit the Commission's options in) the relocation proceeding.

An example may help to illustrate the possibilities: In the *2 GHz Relocation* proceeding, a commenter proposed that all MSS licensees be required to contribute to a “common relocation fund” in proportion to the amount of spectrum available to each licensee, arguing that the existence of such a fund would help to ensure that BAS and other incumbents are fully compensated for their relocation costs.¹⁶ This is a reasonable proposal for the Commission to consider fully in the relocation proceeding. But the Commission's ability to adopt the proposed “common relocation fund” approach could be hindered if it selected an

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1997 Budget Act, we must, however, now consider the details of how to apply these policies to the relocation of the BAS spectrum.”).

¹⁵ See, e.g., Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 95-18, at 7-8 (Feb. 3, 1999); Joint Reply Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 95-18, at 5-9 (Mar. 4, 1999); Comments of ICO Services Limited, ET Docket No. 95-18, at 6-8 (Feb. 3, 1999); Comments of ICO USA Service Group, ET Docket No. 95-18, at 23-26 (Feb. 3, 1999); Comments of the Boeing Company, ET Docket No. 95-18, at 5-6 (Feb. 3, 1999).

¹⁶ See Comments of Iridium LLC, ET Docket No. 95-18, at 4-5 (Feb. 3, 1999).

incompatible licensing scheme in this proceeding. For example, if the Commission were to adopt the Negotiated Entry Approach, it would conditionally authorize all MSS licensees across the entire band, subject to coordination among the systems as they become operational. This would mean that each MSS operator would not know what portion of the spectrum it would occupy until it was ready to commence service and had coordinated with the MSS operator(s) already in operation. Accordingly, it would be virtually impossible to determine each applicant's share of the spectrum (and, accordingly, its contribution to the relocation fund) at the time the relocation is taking place.¹⁷ This could essentially foreclose the "common relocation fund" approach. Premature adoption of any of the proposed licensing schemes could similarly affect the Commission's ability to resolve the complex relocation issues, including whether relocation will take place in one or more stages and whether the MSS applicants will contribute to relocation compensation at the outset of the relocation or will reimburse the first MSS entrant as they themselves access spectrum.

Relocation of BAS incumbents to make the spectrum available for MSS operators is a prerequisite to dividing that spectrum among the MSS applicants. If the Commission puts the cart before the horse and chooses a licensing scheme that has the effect of foreclosing what turns out to be the best approach to relocating the incumbents, either the implementation of the new service or the continued operation of the old, or both, could be jeopardized. Accordingly, the Commission must resolve the relocation compensation issues, in the proceeding initiated for that purpose, before deciding how it will assign the still-occupied spectrum to MSS operators.

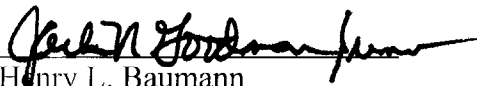
¹⁷ In fact, the IUSG Negotiated Entry proposal contemplates that MSS licensees would not engage in relocation negotiations with or pay compensation to BAS incumbents until after they have satisfied developmental milestones and demonstrated their readiness to commence operations. *See IUSG Comments*, at 16.

III. CONCLUSION

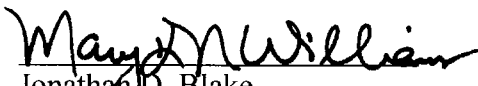
In accordance with the foregoing, in this proceeding the Commission should refrain from adopting *any* licensing scheme for 2 GHz MSS until it decides the outstanding relocation issues in the *2 GHz Relocation* proceeding. In addition, the Commission should ensure that any licensing and service rules it adopts for 2 GHz MSS preserve and protect the relocation compensation principle that the Commission has already determined should govern the relocation of the BAS licensees that occupy the spectrum being made available for MSS.

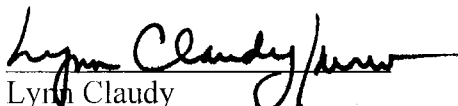
Respectfully submitted,

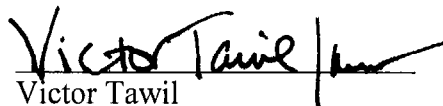
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